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GOVT PUBNS.

ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND
RELATED MATTERS.

Hearing held
8th floor
180 Dundas Street West
Toronto, Ontario

The Honourable Mr. Justice S.G.M. Grange	Commissioner
P.S.A. Lamek, Q.C.	Counsel
E.A. Cronk	Associate Counsel
Thomas Millar	Administrator

Transcript of evidence
for
April 10, 1984

VOLUME 128

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1 ROYAL COMMISSION OF INQUIRY INTO CERTAIN
2 DEATHS AT THE HOSPITAL FOR SICK CHILDREN
AND RELATED MATTERS.

3

4 Hearing held on the 8th Floor,
5 180 Dundas Street West, Toronto,
Ontario, on Tuesday, the 10th
6 day of April, 1984.

7

8 THE HONOURABLE MR. JUSTICE S.G.M. GRANGE - Commissioner
9 THOMAS MILLER - Administrator
10 MURRAY R. ELLIOT - Registrar

11

12

13 APPEARANCES:

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15 E. CRONK)
16 D. HUNT) Counsel for the Attorney
L. CECCHETTO) General and Solicitor General
of Ontario (Crown Attorneys
and Coroner's Office)
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18 I.G. SCOTT, Q.C.) Counsel for The Hospital for
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M. THOMSON)
R. BATTY)
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Children
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23 F. KITELY Counsel for the Registered
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and 35 Registered Nurses at
The Hospital for Sick Children
24
25

(Cont'd)...



1 APPEARANCES: (Continued)

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3 D. BROWN Nurse

4

E. FORSTER Counsel for Phyllis Trayner -
Nurse

5

J.A. OLAH Counsel for Janet Brownless -
R.N.A.

6

S. LABOW Counsel for Mr. & Mrs. Gosselin,
7 Mr. & Mrs. Gionas, Mr. & Mrs.
8 Inwood, Mr. & Mrs. Turner, Mr. &
 Mrs. Lutes, and Mr. & Mrs.
 Murphy (parents of deceased
 children)

9

10 W.W. TOBIAS Counsel for Mr. & Mrs. Hines
 (parents of deceased child
 Jordan Hines)

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VOLUME 128

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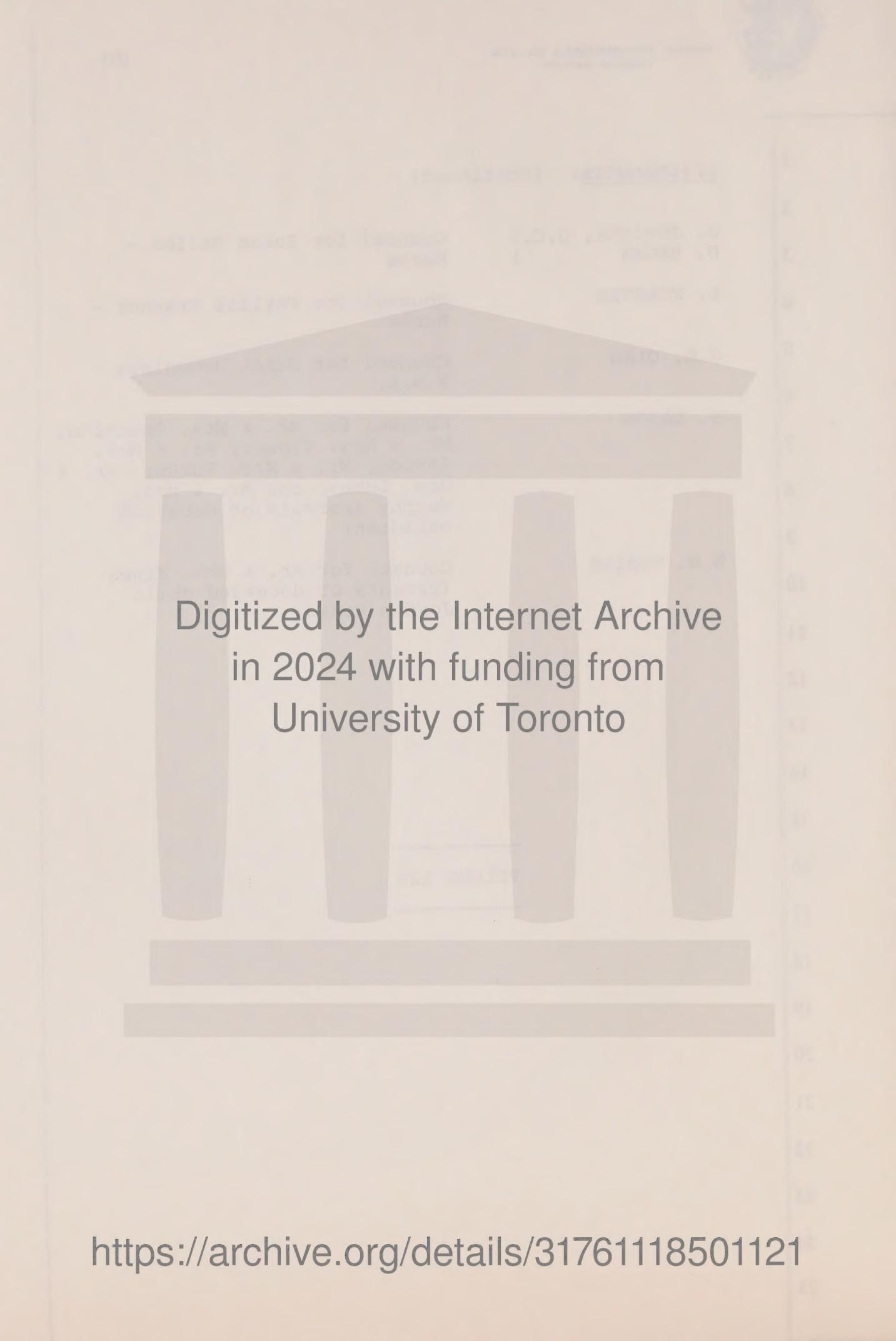
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2 ---On commencing at 9:30 a.m.

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THE COMMISSIONER: Yes, Mr. Tobias.

4

MR. TOBIAS: Thank you, Mr.

5

Commissioner.

6

SUSAN NELLES (Resumed)

7

CROSS-EXAMINATION BY MR. TOBIAS: (Continued)

8

Q. Miss Nelles, in giving your evidence in chief and during Mr. Hunt's cross-examination you gave us your recollection of some of the difficulties that you encountered in working with Mrs. Trayner as you articulated them in October I believe it was in 1980 to Mrs. Radojewski; it was October of 1980, do I have that correctly?

9

A. I don't remember exactly, it was some time in the fall of '80.

10

Q. Of 1980. And it was at or about the time that you were due for your evaluation by the head nurse?

11

A. It was at that time, yes.

12

Q. All right, fine. Now, I take it that by that stage you have already indicated that the problem had become sufficiently troublesome, and that's my word not yours I acknowledge that, that you had decided that if the situation couldn't be improved upon or rectified that you had decided you

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2 wanted to be taken off the team.

3 Now, you also indicated that the way
4 that that was ultimately dealt with was that you and
5 Mrs. Trayner confronted one another to discuss the
6 problems and talk about it. What I didn't understand
7 from your evidence was this. Who was it that
8 suggested that type of resolution, was that your
idea or Mrs. Radojewski's?

9 A. Mrs. Radojewski.

10 Q. All right, and that was
11 something she raised I take it at some time after
12 you had brought to her your concern over the problem?

13 A. That was her suggestion at the
time.

14 Q. All right. And was she
15 suggesting that in effect as an alternative to anything
16 you had suggested prior to that?

17 A. No, that was her recommendation
18 that what should take place as a result of that
meeting.

19 Q. I see. Now, prior to her
20 suggesting that do you recall if you had indicated
21 to her whether or not you wanted to be taken off the
team?

23 A. I said that if it couldn't

24

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2 be resolved that I felt I wouldn't be able to work
3 effectively with her.

4 Q. All right. Now, in fairness,
5 what I read from that answer, and please correct me
6 if I'm wrong, is that at the time you raised it with
7 Mrs. Radojewski you hadn't decided in your own mind
8 that you wanted to be taken off the team, what you
9 were doing was making her aware of the problem
10 listening to any counsel she might give you, open
11 to suggestions as to how it might be resolved and
12 only then in the event that those efforts failed
13 would you want to be taken off the team. Do I have
14 that sequence correctly now?

15 A. Right.

16 Q. All right. You have indicated
17 to Mr. Lamek in your direct evidence that basically
18 that happened in the fall after about four or five
19 months of working on the team, I believe you came
20 on on June 1st.

21 A. Yes.

22 Q. All right. Now, correct me
23 if I am wrong, you were away from the Hospital from
24 August 19th until September 1st?

25 A. Some time around then, yes.

Q. I understand your vacation



1

2 was actually the week of the 25th but that you had
3 a few days off before that?

4

A. Right.

5

Q. And when you came on Mrs. Trayner would have been away on her vacation that
6 she took for her wedding?

7

A. Right.

8

Q. So that in fact prior to the middle of August you had really only worked with Mrs. Trayner about two or two and a half months?

9

A. Right.

10

Q. All right. Do you recall if it was shortly after Mrs. Trayner's return that you had this meeting with Mrs. Radojewski?

11

A. I don't remember, it would have been when I had my evaluation.

12

Q. All you can help me with is some time in the fall?

13

A. Right.

14

Q. In any event, it would appear that the --

15

THE COMMISSIONER: We have the date I think of the evaluation, it is one of the exhibits.

16

MR. TOBIAS: Yes, I believe it was an exhibit, the evaluation.

17

18



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2 THE COMMISSIONER: Well, if it matters
3 we can always get it.

4 MR. TOBIAS: It may assist us with
5 the date, Mr. Commissioner.

6 THE COMMISSIONER: It was when Mrs.
7 Radojewski was giving her evidence.

8 MS. CRONK: It is Tab 16, sir, of
9 Exhibit 32A and it is dated October, 1980.

10 MR. TOBIAS: I am sorry, Ms. Cronk,
11 I missed that, October...

12 MS. CRONK: 1980; October 28th, 1980.

13 MR. TOBIAS: Q. So, we know
14 then it was some time in October when you had the
15 conversation, not necessarily the date that she
actually signed your evaluation report but some time
that month?

16 A. I would think so, yes.

17 Q. It appears from that that the
18 problem was sufficiently bothersome to you that it was
19 still bothering you after you and Mrs. Trayner had been
20 absent from one another's working company for some
five weeks; is that fair?

21 A. Right.

22 Q. Okay. Now, will you agree
23 with me that asking to be taken off the team in the

24

25



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2 event that it didn't work out, and I recognize that
3 you wanted to give it the opportunity to work out,
4 but that was rather a dramatic solution, was it not?

5 A. I don't think it reached that
6 point. I was listening to what Mrs. Radojewski had
7 to suggest.

8

9 Q. Well, I know it didn't reach
10 that point and I don't mean to impute to you that it
11 did. My point is simply this. It is certainly a
12 pretty final solution, it indicates that you were
13 considering it and if indeed it had been necessary
14 it would indicate that the working relationship
15 couldn't get much worse than that, could it?

16

A. Couldn't be resolved, no.

17

Q. Okay. It was resolved before
18 it got that bad?

19

A. That's right.

20

Q. Now, you told Mr. Lamek in
21 chief that by the end of July you hadn't really
22 discerned any pattern in the deaths in the terms of
23 the symptoms that the children were exhibiting or
24 the time frame in which they were dying or which
25 team was on and that really all you did notice was
that it was rather a high number of deaths; do I
have those facts correct?



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MR. SOPINKA: Well, Mr. Commissioner, with respect, the general ground has been covered three or four times. I submit that my friend should restrict himself to particular questions relating to Hines. I mean, this has been gone over, the pattern.

THE COMMISSIONER: Yes, I know.

MR. SOPINKA: I mean, you may find it of some value but frankly, I mean, it doesn't help to repeat it four or five times.

THE COMMISSIONER: The trouble is I never know. I never know whether it is going to be of value or not until the question is out and the answer is in and then sometimes two or three other questions. Mr. Tobias understands that his major issue is of course the death of Jordan Hines but you still have to, you may have to go into other matters in order to assist you in that. As long as you understand the problem, Mr. Tobias.

MR. TOBIAS: I understand that, Mr. Commissioner. I am somewhat concerned though, and I don't for a minute mean to infer that this is how you have been making your rulings or that you ever tried to or have given any indication that you were about to do it, but I do want to make it clear to my



1

2 friend because he raises the point very specifically
3 that we simply can't have one set of rules for the
4 parents of Hines and a different set of rules for
5 all of the other parties and while I will acknowledge
6 that my major function here is to enquire into the
7 cause of and circumstances of his death and only his
death --

8 THE COMMISSIONER: Well, give me a
9 chance to answer that. We have one set of rules and
10 that is that everybody is allowed to cross-examine
11 in accordance with his interest.

12 MR. TOBIAS: Fine.

13 THE COMMISSIONER: The problem is,
14 what is your interest and again with Mr. Sopinka I
15 have to ask what is his interest and what is his
16 client's interest. So, the same rule for everybody
17 but like all rules they are differently applied
because people have different interests.

18 Now, there you are, I don't think you
have advanced the matter very far, Mr. Sopinka -
19 Mr. Sopinka, I am looking at him but he meant well
20 I think.

21 MR. SOPINKA: Well, I mean, if you
take the rules of evidence, if there were multiple
22 defendants all having a special interest, if one
23

24

25



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2 defendant covers the general ground other defendants
3 are never allowed to cover the same general ground.
4 There isn't a different rule, it so happens that Mr.
5 Tobias is last and he's trying to rehash the same
6 general ground that has been gone over four or five
7 times ad nauseum. If he has some special fact that
8 he wants brought out about these trends then I think
9 he should get right to it instead of going along,
10 well now, you were there on such and such a day and
11 on such and such a day, all of which has been gone
12 over ad nauseum and the witness has some rights not
13 to have this stuff repeated over and over again.

12

THE COMMISSIONER: Yes, all right,

13

Mr. Tobias.

14

MR. TOBIAS: Thank you, Mr.

15

Commissioner. Your evidence, Miss Nelles, was that
16 by the end of July you had noticed a high number of
17 deaths. I take it that that is because by my count
18 at least, using Exhibit 383, that there had been six
19 deaths at that time in 30 days and it was really the
number that you noticed rather than anything else.

20

Do I have that correctly?

21

A. Right.

22

Q. Okay. And although the
23 number dropped in August there were only three, I

24

25



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2 take it that that was still noteworthy, given your
3 own previous experience in cardiology?

4 A. I think of the time in July
and August as one area.

5 Q. As one period and the only
6 thing that was really noteworthy was the number of
7 deaths and nothing else?

8 A. Right.

9 Q. All right. Now, you were
10 away between August 19th and September 1st?

11 A. Right.

12 Q. Did you know in July and
earlier in August that you would be team leading
13 in September?

14 A. I don't remember.

15 Q. All right. Surely though you
16 would have had to know that before you returned to
the Hospital on September 1st?

17 A. I don't remember if I knew
beforehand, I imagine I did.

18 Q. All right. Did you have any
concern whatsoever about team leading for the first
21 time given the high number of deaths and the apparent
22 cluster?

23 A. I never related it to that, no.

24

25



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Nelles, cr.ex.
(Tobias)

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Q. So it didn't bother you that you
might be taking on your first team leading assign-
ment at a bad time, bad luck?

5

A. I don't remember thinking
that, no.

7

Q. Now obviously it was a time
of great strain for you, you have already indicated
that. By my count, prior to your vacation, you had
experienced about nine deaths in a little over 50
days. When you came back in September and you were
team leader were you relieved that things had
apparently quieted down?

13

14

A. All I remember is coming back
from vacation and ready for a new start sort of
thing.

16

17

Q. Now between September 1st and
the 25th, which is a period of 25 days, the evidence
indicates that there was only one death, was that
something that you took note of?

19

A. No, it was not.

20

21

Q. You didn't relate that
necessarily back to the rather high number of deaths
in July and August?

23

A. No, I did not.

24

Q. You didn't think to yourself

25



Nelles, cr.ex.
(Tobias)

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thank God, it's over?

3

A. No, I didn't.

4

Q. So that you didn't note any
contrast at all between the two time periods?

6

A. Not really, no.

7

Q. Now you also indicated, and
this is simply a question that I ask because I
find your evidence slightly confusing and perhaps you
can help me clear it up. At Volume 124, and the
page reference, sir, is 8247. You indicated that
you had asked Phyllis Trayner on the night of Allana
Miller's death to flush Miller's IV line and do her
vital signs in your absence; but you had earlier
said that you checked Miller's vital signs at 11:45
yourself before leaving to take Justin Cook to the
echo lab. Were there vital signs to take again
after that?

17

A. Allana Miller was on hourly
apical rate.

19

Q. Right.

20

A. She would require all her
vital signs to be done at midnight.

22

Q. So the vitals that you were
asking her to take for you would those have been
the vitals that you anticipated had to be checked

24

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B3

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2 at 1 o'clock?

3

A. No, at midnight.

4

Q. But did you in fact take - oh,
I see, did you take the apical rate at 11:45?

5

A. That's right.

6

Q. Why did you want it checked
again at midnight 15 minutes later?

7

A. Because as I say I wouldn't
be there and she would be requiring all of her
vital signs to be done at midnight.

8

Q. I understand. Did you take
any of her other vital signs at 11:45?

9

A. No, I did not.

10

Q. So the only thing you did at
11:45 was check the apical rate?

11

A. And the intravenous, yes.

12

Q. And you had intended to leave
the rest of the vital signs until midnight, and your
intention was to ask Phyllis Trayner to take those
for you?

13

A. Yes.

14

Q. And she did take those vital
signs at midnight as her writing on the medical
chart indicates?

15

A. I don't know, someone did.

16

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Nelles, cr.ex.
(Tobias)

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Q. Now you have also given evidence that when you came on shift on March the 21st you were to administer propranolol to Baby Cook, and you did indicate that there had been a shortage of propranolol and that in fact some had been drawn up by Nurse Scott. Your evidence was then that you checked with Phyllis Trayner who was your team leader before administering the medication drawn up by another RN. There is nothing unusual about that, is there?

A. No, it is not.

Q. As a matter of fact it is good nursing practice in a situation where you were unsure to check with your immediate superior who would be your team leader and let her make the decision?

A. Right.

Q. Now at 1:00 a.m. on March the 21st Allana Miller, as you have already indicated, was due for an administration of gentamicin, and I understand that Phyllis Trayner at that time came to you and asked you to check the dose.

A. I'm sorry, I am confused about which night we are talking about, because Justin Cook was due for propranolol that night of the 21st.



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2

Q. It would have been the long
night shift of the 21st and 22nd.

4

5

A. Now you are back to Allana
which is the 20th.

6

7

Q. That's right, back to the
morning, the Friday night, early Saturday morning
1:00 a.m., the night before.

8

9

A. Okay.

10

11

12

13

14

Q. At that time as I understood
your evidence Nurse Trayner came to you, and you
couldn't remember whether you had asked her to give
the gentamicin or she was doing it for you, and she
checked with you the dosage and showed you what she
had drawn up out of the vial.

15

A. Right.

16

17

18

Q. Now prior to that had Phyllis
Trayner given medications for you before, over the
nine month, or longer over the 10 or 11 months that
you had been working with her?

19

A. I don't remember, she could have.

20

21

22

Q. Do you have any recollection -
let me ask this, is it possible she could have given
antibiotics for you on a prior occasion?

23

A. She could have.

24

Q. It is possible?

25



Nelles, cr.ex.
(Tobias)

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A. Yes.

3

4

Q. Do you have any specific
recollection of her coming to you before --

5

6

7

MR. SOPINKA: How could she have,
she only said she could have, she doesn't remember
any occasion, so how could she have any specific
recollection?

8

9

THE COMMISSIONER: Well, I think
the answer is going to be an easy one.

10

11

MR. TOBIAS: I would have thought
that the answer is obvious.

12

13

14

15

16

17

MR. SOPINKA: All the answers are
obvious, you might as well be putting them through
a dictating machine. I mean the witness has indicated
she doesn't remember anything about Hines except
certain matters relating to the arrest, and my
friend has been cross-examining for an hour and a
half.

18

19

MR. TOBIAS: May I put the question,
sir?

20

THE COMMISSIONER: Yes.

21

MR. TOBIAS: Thank you.

22

23

24

Q. Do you have any specific
recollection of Phyllis Trayner ever having checked
a dosage of antibiotics that she was about to

25



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Nelles, cr.ex.
(Tobias)

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2 administer on your behalf, prior to that night?

3 A. I don't remember.

4 Q. Was there anything strange
5 or unusual about her being the team leader checking
6 with you on an administration of antibiotics which
I understand didn't have to be checked?
7

8 A. Not in light of the fact that
she was giving the medication for me.

9 Q. Nothing strange or unusual
10 about that?

11 A. We don't normally have to
check antibiotics, but in this circumstance she was
12 giving a medication for me.
13

14 Q. What I want to know is this,
15 were you surprised only because it was an antibiotic
16 she was asking you to check, or because she was a
team leader and asking you to check that dosage,
17 which was it that was surprising?

18 A. Because it was an antibiotic.

19 Q. The fact that she was team
leader had nothing to do with your element of
surprise?
20

21 A. No.
22

23 Q. Now you also gave evidence
regarding the flushing of the IV line. I believe
24

25



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Nelles, Cr.ex.
(Tobias)

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you indicated that your own practice was not to do
it with a syringe but rather let some material
from the bag flow through into the line?

5

A. That's right.

6

Q. Now, first of all, would
that method not be the easier of the two methods
in terms of flushing the line?

8

A. It is.

9

Q. And I take it that is why
that was your normal practice because it was easier?

11

A. Right.

12

Q. And less trouble to do it that
way?

14

A. That's right.

15

Q. Now, do you have any knowledge
at all of what the practice of other RNs on your
team was in terms of flushing IV lines?

17

A. I would think the majority
of them would do it the way that I just demonstrated.

19

Q. And that would be by opening
the bag and allowing the material to flow through
rather than using the syringe.

22

A. Right.

23

Q. Now, in Mr. Hunt's cross-
examination you were specifically asked whether it

24

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had ever occurred to you that perhaps the coincidence
of how many of the babies that you were caring for
died under somewhat unusual circumstances; whether
it had ever occurred to you or entered your mind
that someone might be trying to discredit you. Your
response was that it had. Do you recall when that
first came to mind?

8

9

A. No, it was some time after
I was charged.

10

Q. Do you know whether it was
before or after those charges were disposed of?

12

A. I would imagine it was before.

13

Q. Fine, and obviously it was
something that you thought about and considered?

14

A. There are a number of things
that I thought of and considered, yes.

16

Q. And that was one of them?

17

A. That's right.

18

Q. Now, I take it that if that
did enter your mind and you were considering it,
that you must have cast about in your own mind
thinking of who might wish to discredit you?

22

A. Yes.

23

24

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2 Q. And did you come to any
3 factual basis --

4 THE COMMISSIONER: Wait, wait.

5 MR. SOPINKA: No, I think --

6 MR. TOBIAS: Well, I am putting the
7 question very carefully, Mr. Sopinka. Allow me to
put the question before you object.

8 MR. SOPINKA: Well, with respect,
9 he has gone as far as he ought to be allowed to go.

10 THE COMMISSIONER: Well, if there
11 are any facts, but surely there are at this point
12 very few facts. If you have a fact you want to put
13 to her, that is fine, Mr. Tobias, but it is impossible
14 for me to think there is another fact that could have
15 induced her to reach this conclusion that hasn't been
disclosed so far.

16 MR. TOBIAS: Well, first of all, it
17 is not a rule of law or evidence, it is a matter of
18 common sense and etiquette to wait until a question is
finished before you object.

19
20 Excuse me, Mr. Roland, are you not
feeling well this morning?

21 Secondly --

22 MR. SOPINKA: I am surprised --

23 MR. TOBIAS: Secondly and more

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25



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C2 2 importantly --

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lectured to by Mr. Tobias on the rules of ethics. He
has obviously violated most of them in his cross-
examination.

4

THE COMMISSIONER: Well, we are not
advancing anything at the moment.

5

MR. TOBIAS: Secondly and more
importantly I have very carefully followed the ruling
that you made. The question that was put to the
witness was a fair and proper question, and that was
whether there were any facts, any factual basis that
would allow her to come to any conclusion. If there
weren't, then --

6

THE COMMISSIONER: If there were any
facts. What was worrying us was that if people don't
have the ruling in mind, they might well answer -- I
don't want to take over this examination --

7

MR. TOBIAS: Well, if those who
object were here more often, they would be aware of
those rulings.

8

THE COMMISSIONER: Let's not get into
that. We have other matters to attend to.

9

Whatever conclusion you did reach,
Miss Nelles, was it based upon any solid fact? Did you

10

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C3 2 have any solid fact that led you to whatever con-
3 clusion you did reach, if you did reach a conclusion?

4 THE WITNESS: I don't think I ever
5 reached a conclusion.

6 THE COMMISSIONER: Well, that's it.

7 MR. TOBIAS: That's fine. That is the
end of it.

8 THE COMMISSIONER: That solves that
9 problem.

10 MR. TOBIAS: Q. Now, you also
11 indicated in Mr. Percival's cross-examination that
12 when you used the term "intervention", when Mr. Lamek
13 used that term and you agreed with it, what you meant
14 was by a person doing something to a baby. Do I have
that correctly?

15 A. That was one possibility, yes.

16 Q. Okay. That is one possibility
17 you did consider and that you weighed in your mind?

18 A. Right.

19 Q. And again did you cast about
20 in your mind at that time for any possible identity
21 of anyone who might wish to harm a baby? Was that
something that you ever considered?

22 A. Yes, it was.

23 Q. All right. Now again did you

24

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C4

2 come to any conclusions, and if you did, did you have
3 any factual basis for coming to those conclusions?

4 THE COMMISSIONER: I think we can
5 solve it by the first part. Did you come to any
6 conclusions?

7 THE WITNESS: No, I did not.

8 MR. TOBIAS: All right. Fine.

9 Thank you.

10 Q. In Mr. Labow's cross-examina-
11 tion of yesterday you indicated that the comments
12 that were transcribed in Miss Costello's notes and
13 were attributed to you at the meeting of March 23rd
14 at Liz Radojewski's house simply meant no more than
15 that the nurses had to stick together as a group of
16 nurses. Do you recall giving that evidence?

17 A. Right.

18 Q. My question is simply this:
19 For what purpose did the nurses have to stick together?

20 MR. SOPINKA: Oh, wait.

21 THE COMMISSIONER: We are going to
22 have some trouble with that because that I think is
23 Phase II. I thought that the part of that meeting,
24 if we went into it at all, was the part that dealt
25 with Kevin Pacsai, and we have had that.

I think the purpose for which they



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2 were sticking together - if no one else has any
3 objection to this, I don't want to raise my own, but
4 it does seem to me that the probability is that that
5 relates, if at all, to the second phase.

6 MR. TOBIAS: Well, if I may respond --

7 MR. SOPINKA: I think we have been
8 through this before and you allowed that question to
9 be put because it was suggested that that might
10 reflect on the earlier statement that everything had
11 been done properly in the case of Pacsai, and why
12 would you have to stick together.

13 THE COMMISSIONER: Well, perhaps,
14 but the first part of that statement clearly had to
15 do with Pacsai and had to do with the cause of death.

16 The second part of it was much
17 more dubious, and every time we do come to the second
18 part, we have to skate very carefully on very thin ice.

19 MR. TOBIAS: Two points by way of
20 response, sir. It was the witness' evidence yester-
21 day as I read it, and I may have misread it - I
22 acknowledge that possibility --

23 THE COMMISSIONER: Well, I think --

24 MR. TOBIAS: -- that the comment went
25 to more than Pacsai.

THE COMMISSIONER: Well, I am the only



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C6 2 person objecting to it so you go right ahead then.
3 No one else is raising the question so...

4 MR. TOBIAS: All right.

5 Q. What I put to you: Given the
6 evidence you have already given to us and the evidence
7 particularly you gave to Mr. Labow yesterday about the
8 fact that you were sure there had been no errors made
9 with respect to Pacsai; you were confident you had done
10 nothing wrong; there was nothing to worry about, and
11 given the fact that, as you indicated to Mr. Labow
12 yesterday, you were aware of an investigation, you
13 were aware of a Coroner's investigation into the
14 death, the nurses as a group had to stick together and
15 support one another. For what purpose did they have
16 to stick together?

17 A. I told you that - or as I said
18 yesterday, that those two statements that Miss
19 Costello wrote were not related.

20 Q. I believe you also said that
21 the statement about sticking together related to the
22 fact you were aware that a Coroner's inquest had been
23 called and there was an investigation ongoing.

24 Now, in that context what did that
25 have to do with sticking together? What did you have
to stick together about?

MR. SOPINKA: She has already



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2 testified, and I mean in view of the fact there were
3 these proceedings going on, this statement was made
4 in that context. If my friend was ever being summoned
5 to a Coroner's inquest, he might want to have some
6 discussion about how it was to be handled as well,
7 and this obviously relates to Phase II.

MR. TOBIAS: No, indeed --

8 MR. SOPINKA: What she has said has
9 nothing to do with Pacsai. Those two statements aren't
10 related. What has that to do with the cause of death?

11 THE COMMISSIONER: That was my
12 position, but I thought you were arguing against me.

13 MR. SOPINKA: No, I was agreeing. I
14 said that you had allowed it in for a limited purpose.
15 Obviously I didn't make myself very clear. It having
16 been established that the second statement was not
17 related to Pacsai, that's the end of Phase I as far
18 as I can see, and I pointed out that was your ruling
yesterday.

19 THE COMMISSIONER: That is what I had
thought too.

20 MR. TOBIAS: If I may respond?

21 THE COMMISSIONER: Yes. All right.

22 MR. TOBIAS: I mean if you find
23 against me, fine, but at least allow me to respond, sir.

24

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C8 2 The point, why I believe it relates
3 to Phase I is because it relates directly to the
4 credibility of a number of witnesses that have been
5 called in the last six weeks.

6

7 THE COMMISSIONER: I don't know how
8 it relates to the credibility. They have all said
9 the same thing. They have all said the same thing
10 and --

11

MR. TOBIAS: Fine. Now we have --

10 11 THE COMMISSIONER: In every instance
12 she has said, I gave the right dose --

13

MR. TOBIAS: Yes.

14

15 THE COMMISSIONER: -- and I had it
16 checked by Mary Jean Halpenny, and that's it. Then
17 I went on to say, we will all stick together. Now
18 that "we will all stick together" is something we are
19 going to go into again and again and again --

20

MR. TOBIAS: Yes.

21

22 THE COMMISSIONER: -- in Phase II,
23 but I don't really want to go into it here unless we
24 have to.

25

MR. TOBIAS: Right.

26

THE COMMISSIONER: How is it relevant?

27

28 MR. TOBIAS: It is relevant in that
29 I think this witness has offered a new interpretation

30

31



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C9 2 and a new piece of evidence. I understood the other
3 witnesses to be indicating that comment only went to
4 Pacsai and Pacsai only, and that they steadfastly
5 denied it had anything to do with any other events
6 or any other investigation ongoing.

Now, those witnesses said that --

MR. SOPINKA: That is not the evidence.

THE COMMISSIONER: Well, it may be
9 some of it but also some of it is not too. Now what
10 are you saying?

11 MR. TOBIAS: Now if this witness
12 has said otherwise, then I put to you that affects the
13 credibility of the evidence that you have already
14 heard from the other witnesses, and that surely --

THE COMMISSIONER: Well, it --

15 MR. TOBIAS: -- reflects on the
16 weight you have got to give that evidence in Phase I.

17 THE COMMISSIONER: I am not giving
18 it any weight at all in Phase I at the moment at
19 least. Unless somebody can persuade me it has something
20 to do with Phase I, I am not going to give it any
21 weight.

22 MR. TOBIAS: Sir, what I am saying,
23 I think it has to affect the weight that you give to
24 the general evidence of all of those witnesses with

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Nelles
cr.ex. (Tobias)

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2 respect to Phase I, and surely they must have testi-
3 fied as to matters that go to Phase I. Otherwise
4 I don't think we would have wasted six weeks in
calling them.

5

THE COMMISSIONER: All right.

6
7 MR. SOPINKA: Mr. Commissioner, my
friend has lectured about ethics. I thought the first
8 rule was that when the Commissioner makes a ruling,
9 you don't keep arguing about it until you are worn
down and persuaded otherwise. You have made your
10 ruling and I submit my friend should go on to something
11 else.

12

13 MR. TOBIAS: I have nothing further
to add, sir.

14

15 THE COMMISSIONER: Well, in my view,
rightly or wrongly, the first part of it has to do
16 with the cause of death; the second part of it can only
17 relate to Phase II, and therefore I don't want to
18 pursue it.

19

20 MR. TOBIAS: Q. Miss Nelles, I
would like to ask you this last question from today's
21 perspective. Obviously these matters are something
22 that over the last three years you have been pre-
occupied with, and I sympathize with you, and I say
23 that sincerely. I know that you have obviously gone

24

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2 Cll through a great deal of stress. You have obviously
3 given the events of the last three years an awful lot
4 of thought. You went through a very trying preliminary
5 inquiry. You have gone through a very trying week and
6 a half at this Commission.

7 Given all you know today, all of the
8 evidence from all sources, your own perceptions,
9 things that you have read in the charts, the evidence
10 of other witnesses that you have heard, is there any
11 explanation that comes to your mind, and I want your
12 own view on this, as to how so many of these babies
13 over a nine-month period came to their deaths, in a
14 great many cases suddenly and unexpectedly, again in
15 a narrow time band, in the presence of a particular
16 nursing team, and again in some cases having exhibited
17 signs of digoxin, and in other cases that being the
18 case where no digoxin was even prescribed.

19 Is there any explanation that you
20 have for that in your own mind?
21 —
22
23
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2 MR. SOPINKA: I don't think that's
3 a fair question. I mean, that first of all is a
4 question for you. My friends' question reads for
5 about 15 lines. That's not a question for this
6 witness, that's a question for the Commission and
7 it would be based on opinion and it wouldn't be fair
8 to have it answered unless all the factual basis is
9 identified so that you would know whether there are
10 any other facts in support of that. So, I submit
11 that the witness has given all her knowledge about
12 any circumstances and she shouldn't be asked to
venture an opinion on the matter.

13 THE COMMISSIONER: Anything further
14 you want to offer us on that matter, Miss Nelles?

15 THE WITNESS: As Mr. Sopinka says
16 I think that that's - I don't feel qualified to
answer that.

17 MR. TOBIAS: Thank you, Miss Nelles.

18 THE COMMISSIONER: Yes, all right,
19 thank you. Mr. Sopinka?

20 MR. SOPINKA: I have no re-examination.

21 THE COMMISSIONER: Mr. Lamek?

22 RE-EXAMINATION BY MR. LAMEK:

23 Q. Miss Nelles, there are a few
24 matters that I would like to discuss with you if I
25



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Nelles, re-ex.
(Lamek)

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may but perhaps we could do what may first of all
fall into the area of housekeeping.

4

5

First, do you have available to you
Volume 124 of the transcript, please? I think we
can make a copy available or we can look at mine.

6

7

Page 8301. I was asking you in chief
about the breaks on the night when Justin Cook died
and I asked you at line 7 this question:

9

10

"Q. From the time you returned
from your break,..."

11

And that was the coffee break I was referring to.

12

13

"...and I think you said at that point
Mrs. Trayner left the room, did you
then remain with Justin Cook in Room
418 for a period of time?

15

16

A. Yes, I did.

17

Q. For how long?

18

A. Until Sui relieved me for my
next break."

22

23

And I confess that was not my
recollection of your evidence. If that is a wrong
statement in the transcript, could we please correct
it.

THE COMMISSIONER: It is "she".

24

25

MR. LAMEK: Q. Who relieved you



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for your next break on the night that Justin Cook
died?

4

A. Mrs. Trayner did.

5

6

And that answer should there-
fore read "Until Mrs. Trayner or Phyllis relieved
me for my next break."

7

THE COMMISSIONER: No, it should
read "she".

8

MR. LAMEK: Should it?

9

10

11

THE COMMISSIONER: It should be "she"
instead of "Sui", it is as simple as that I think.

12

MR. LAMEK: It could indeed.

13

THE COMMISSIONER: Yes.

14

15

16

MR. LAMEK: Q. But if we can
identify the person and avoid any ambiguity on
pronouns, it is intended to refer to Mrs. Trayner.

17

A. Right.

18

19

20

21

22

Q. Thank you. And at page 8130
in the same volume, I had been asking you on the
preceding page, Miss Nelles, about your recollection
of an occasion when you said Mrs. Trayner had drawn
up arrest drugs prior to an arrest being called; do
you remember that?

23

A. Right.

24

Q. And that was page 8129. You

25



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couldn't identify the particular occasion or the
child that was involved but then I asked you at the
bottom of page 8129:

5 "Q. And thereafter that shift did
6 a patient in fact arrest and die?"

7 Your answer is transcribed as:

8 "A. I don't think so but again I
9 can't be sure."

10 And I confess that wasn't my
11 recollection of your answer. I thought you said you
12 did think so but you couldn't be sure. So, let me
ask you the question again please.

13 Is it your recollection that on the
14 night when you do remember Mrs. Trayner as having
15 drawn up drugs for an arrest in advance of an arrest
16 being called, is it your recollection that a child
17 did in fact arrest that night?

18 A. I really can't be sure because
19 I can't remember exactly when she, for which child
20 or when she drew up the medications. I can't be
21 sure if in fact the results that you suggest did
22 take place afterwards. It is my feeling that, yes,
23 that did happen but I can't be sure.

24 Q. All right. So there is clearly
25 uncertainty in your mind as to whether in fact there



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was an arrest that night but to the extent that you
have a recollection you think there may well have
been one?

5

A. Right.

6

Q. All right.

7

MR. SOPINKA: Well, I wonder if
it is an arrest or a reconstruction?

8

9

MR. LAMEK: I don't know.

10

THE COMMISSIONER: A feeling, I
think I would put "I feel".

11

12

MR. LAMEK: Q. It is your feeling
that there was one but you can't be sure?

13

A. Right.

14

Q. All right.

15

16

THE COMMISSIONER: I don't know
what a feeling is, whether that is a reconstruction
of anything else.

17

18

19

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MR. LAMEK: Q. Now, at Volume 125
of the transcript, page 8371, Mr. Commissioner,
beginning at line 2 Mr. Strathy asked you these
questions and I read them to you merely to bring the
topic back to mind, Miss Nelles:

22

23

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"Q. You testified that you, after
Cook had been admitted, that you took
Baby Cook to the echo lab.



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"A. That's right.

3

Q. Do you have a recollection of
how it was that you took Cook, in
other words did you carry Cook in
your arms, did you wheel him in a
bed, how did you pick the baby up?

7

A. I can't remember.

8

Q. I beg your pardon?

9

A. I can't remember.

10

Q. How old was Baby Cook?

11

A. He was about three and a half
months old.

12

Q. With a baby that age would it
be quite possible that you would in
fact carry the child?

13

A. Yes, it would be.

14

Q. If I suggested to you it is
more likely than not that you did
carry the child to the echo lab,
would you be prepared to agree with
that?

15

A. I really can't remember whether
I took him in his bed, or whether I
carried him."

16

And then again at page 8406 Mr. Strathy

17

18



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(Lamek)

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reminded you there of the note in the chart in which
you had said, this is line 13, 14, Mr. Commissioner:

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"At apprximately 030 I returned to
418 where I put Justin in his crib
in 100 per cent oxygen and settled
him."

8

And then he asked you:

9

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"Now, looking at those notes, is it a
fair inference from those notes that
because you say that on returning to
418 that you put Justin in his crib,
is it a fair inference that when you
took him to the echo lab and when you
brought him back from the echo lab
he was in your arms rather than in
his crib?"

And you agreed that that was a fair
inference. Do you in fact have any recollection of
how you took Cook to the echo lab and brought him
back?

A. I really don't remember. I
believe that that was taken from the notes that I
wrote myself.

Q. Yes, it was. Did anyone go
with you when you took Cook to the echo lab?



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A. I know that Dr. Soulioti and Dr. Schaffer were there. I can't remember again whether they actually walked down - I believe that Dr. Schaffer had already gone ahead but I believe that Dr. Soulioti may have walked with me but I can't be sure again, she may not have as well.

Q. Did the baby have an IV running?

A. No, he did not.

Q. Okay. And therefore that doesn't assist you at all in knowing whether you took a crib or carried him in your arms?

A. I can't remember.

Q. All right. I want to go to another event of that night and that is the administration of the 1 o'clock dose of gentamicin to your patient that night, Allana Miller. I don't think I need to refer you to the evidence, it is found, Mr. Commissioner, for your reference in Volume 124 at page 8250 beginning at line 6 and going over to the next page. Mr. Olah asked you about it yesterday, you will remember.

A. Right.

Q. That is Volume 127, page 8815 to 6, sir.

Now, as I understand it from your



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2 evidence, Miss Nelles, Mrs. Trayner brought into
3 the room the medication ticket.

4 A. Right.

5 Q. You were in 418, she brought
6 to you the medication ticket and a vial or more
7 than one vial of gentamicin.

8 A. A empty vial.

9 Q. A empty vial. And a syringe
10 into which she had drawn up presumably the gentamicin.

11 A. Right.

12 Q. Do you recall what size that
13 syringe was?

14 A. No, I'm sorry, I don't remember.

15 Q. Do you recall the dose of
16 gentamicin which was to be administered and you
17 don't have to test your memory we can look at the
18 chart I take it.

19 A. Right.

20 Q. It appears that the order
21 was written, page 38 of the chart, sir, for 10
22 milligrams IV every eight hours. Can you tell me
23 please what volume of material is needed to administer
24 8 milligrams of gentamicin?

25 A. It is 8 or 10?

MS. CRONK: 10.



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2

MR. LAMEK: I'm sorry, 10 milligrams.

3

THE COMMISSIONER: Page 30 in mine

4

is --

5

MR. LAMEK: Page 38 is the
medication sheet, sir.

6

THE COMMISSIONER: 38.

7

THE WITNESS: Again, it is very
difficult for me to remember because I don't give
those antibiotics as much any more but I believe
that gentamicin came - I believe it was 80 milligrams
in 2 cc's, so therefore, 40 milligrams per cc, or
1 cc, I'm sorry.

13

MR. LAMEK: Q. If you are right
about that then we are talking about a quarter of a
cubic centimetre of liquid?

15

A. Right.

16

Q. To deliver 10 milligrams of
gentamicin?

18

A. Right.

19

Q. And that would not take a
large syringe I take it?

20

A. No, it would take a tuberculin.

21

Q. I'm sorry?

22

A. It would take a 1 cc or a
tuberculin syringe.

23

24

25



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(Lamek)

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Q. Now, that doesn't of course
tell us what size syringe Mrs. Trayner actually had.
Do you have a recollection of that?

3

A. I really don't remember.

4

Q. I understand from all the
evidence that we have heard that the tuberculin
syringe, the 1 cc size was commonly used on the
cardiology floors.

5

A. Yes, it was.

6

Q. Was it the most frequently
used size syringe?

7

A. In administering medications,
probably.

8

Q. Do you have any recollection,
whether at around the 20th, 21st or 22nd of March
there was any shortage of tuberculin syringes on
that floor?

9

A. No.

10

Q. You have no recollection?

11

A. No, I don't.

12

Q. If indeed Mrs. Trayner were
unable to obtain a 1 cc syringe to administer that
gentamicin, what's the next size syringe moving
up in volume?

13

A. A 3 cc.

14

15



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Q. A 3 cc?

3

A. Right.

4

Q. Now, you told, I think

5

Mr. Olah, yesterday, and I think you told Mr. Tobias again this morning that you were not surprised that Mrs. Trayner checked that gentamicin dose with you before she administered it because she was giving it to your child.

9

A. Right.

10

Q. And although one normally did not need to check antibiotics with another nurse before administering them, in this case the dose being directed to your patient, you didn't find it particularly odd that she did, and check with you?

15

A. No, although, I found it a little surprising that she did check an antibiotic.

16

Q. Sure. What's the purpose of checking drugs with another nurse?

18

A. Well, normally they are specific drugs that, according to protocol, must be checked and I think with digoxin, for instance, the purpose in checking is that you are dealing with decimal points and with a very small margin of error - well, actually quite a large margin of error in that I mean if you move the decimal point to the left or

24

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Nelles, re-ex
(Lamek)

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to the right it could make quite a dramatic difference.

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Q. Yes. When you say you did not find it particularly surprising that Mrs. Trayner should come and check that gentamicin with you, are you saying essentially this, that in the circumstances where Nurse A is going to administer a drug to Nurse B's patient it's not surprising that Nurse A would want Nurse B to be satisfied that she was indeed administering what was prescribed in the amount prescribed?

11

A. Yes.

12

13

Q. Now, that didn't happen here though, did it? The drug was already drawn up, was it not?

14

15

A. That's my recollection, yes.

16

Q. And that's been your evidence?

17

A. Yes.

18

Q. And you had no assurance that that syringe contained gentamicin, did you?

19

20

A. Other than that she had the empty vial with her.

21

22

Q. Right. Any more than you had had any assurance that the contents of that syringe in the fridge were indeed Interal?

23

24

A. Right.

25



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Q. Now, you had no reason to
doubt either, did you?

4

A. No, I did not.

5

6

Q. But you had no certain
knowledge?

7

A. Other than what she showed me.

8

Q. And if Mrs. Trayner's purpose
in checking, which was what we called it, checking
the gentamicin with you was to satisfy you that
she was giving the right drug in the right amount
to your patient, did she not in fact make it
impossible for you to be satisfied because the drug
was already drawn up when she came in?

14

A. I don't remember feeling
unsatisfied.

15

Q. No, but I ask you now how
could you be satisfied that she was in fact
administering the prescribed drug in the prescribed
amount when the drug was already drawn up when she
came in?

20

A. I guess I trusted her.

21

Q. Of course you trusted her but
you couldn't be satisfied?

22

A. Right.

24

Q. And if the purpose of checking

25



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Nelles, re-ex.
(Lamek)

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was to satisfy you that purpose could not have been
achieved, could it?

3

4

A. No, because it was already
drawn up.

5

6

Q. But that did not occur to you
at the time?

7

8

A. No, it did not.

9

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Q. I take it the only way you could have been truly satisfied that the right drug and the right amount was being administered to your patient was if the drug had been drawn up in your presence?

3

A. That's right.

4

Q. Let's move to an event that occurred the next night, the night of Justin Cook's death.

5

THE COMMISSIONER: Yes, Mr. Olah.

6

MR. OLAH: I am sorry, maybe my friend could clear up whether in fact the normal procedure, is it in fact drawn up with the other nurse.

7

THE COMMISSIONER: There is no checking at all with gentamicin.

8

MR. OLAH: When checking does occur, I wonder if my friend might perhaps say so on the record.

9

MR. LAMEK: Q. Can you help me? You heard the question Mr. Olah wants me to ask, and I will repeat it. As I understand it the question is the drugs that do need to be checked with another nurse, is it customary not only to check the quantity of the drug but also to draw the drug up in the presence of another nurse?

10

11



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Nelles, re.dr.
(Lamek)

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A. Usually you would be together
but there were occasions as well where someone else
was busy and you would draw up the medication and
have them ready and then the other person would come
and check these syringes with the medication ticket.

3

4

5

6

Q. But the two situations are
really quite different, are they not?

7

A. Yes they are.

8

Q. Normally you draw up the
drug for your own patient?

9

A. Right.

10

Q. And with those which you are
required to check you are checking that you have in
fact drawn up the right amount?

11

A. That's right.

12

Q. And therefore you don't need
to draw that drug up in the presence of anybody
else as long as the calculation of the dose and the
quantity in the syringe is correct?

13

A. Right.

14

Q. Here you are talking about a
situation of A administering a drug to B's patient?

15

A. Right.

16

Q. In those circumstances, would
you expect to be satisfied that A was in fact

17

18



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9002

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2 administering the right drug to your patient?

3 A. If it was a drug that was
4 supposed to be checked?

5 Q. Whether it is a drug that is
6 supposed to be checked or not. Did you not have
7 misgivings about using the syringe in the
refridgerator?

8 A. Yes, I did.

9 Q. Why?

10 A. Because I had not drawn it up.

11 Q. Because you had not drawn it
12 up. Did you have some misgivings about the drugs
taped to the foot of Justin Cook's bed the next night?

13 A. To some extent, yes.

14 Q. Because you hadn't drawn it
15 up?

16 A. Yes.

17 Q. And I take it those concerns
reflect your measure of unease of giving something
18 to your patient which you have not yourself prepared?

19 A. Right.

20 Q. Whether it is a drug whose
21 quantity needs to be checked or not?

22 A. Right.

23 Q. And therefore the situation

24

25



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9003

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2 where someone is going to administer to your
3 patient a medication is a bit different from the
4 normal checking of dosage procedure is it not?

5 A. Right.

4 THE COMMISSIONER: You can tell how
6 much of course is in the syringe?

7 THE WITNESS: Yes.

8 THE COMMISSIONER: You just can't tell
9 what the drug is?

10 THE WITNESS: No.

11 THE COMMISSIONER: If I were to hand
12 you a syringe --

13 THE WITNESS: Right.

14 THE COMMISSIONER: It might be the
15 right colour and that sort of thing, but you couldn't
16 say it was the right drug because it has been taken
17 out of the vial. That presumably was what Mrs.
Trayner was presenting you with the vial for?

18 THE WITNESS: That's right.

19 THE COMMISSIONER: So you would know
20 it had come out of the vial?

21 THE WITNESS: Right.

22 THE COMMISSIONER: There is surely no
23 reason for you to be suspicious at all?

24 THE WITNESS: Not at all.

25



1

6 2 Mr. Commissioner.

3 THE COMMISSIONER: The page?

4 MR. LAMEK: 8373, I am sorry.

5 Q. Mr. Strathy was asking you,
6 Miss Nelles, about your long break, the second break
7 on the night that Justin Cook died?

8 A. Right.

9 Q. And he asked you these
questions beginning at line 11, sir:

10 "Q. How long was it that you were in
11 the nursing station for your break,
12 in total?

13 A. About 45 minutes.

14 Q. During that time do you recall
15 going back to look in on Cook from time
to time?

16 A. I went to the doorway, yes.

17 Q. The doorway of the Cook room?

18 A. Yes.

19 Q. And why was that?

20 A. Because I wanted to see how he
21 was."

22 We pause there. Do you recall whether there was any
23 particular event that caused you to go to the room to
24 check on the child during your break?

25



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2

A. It is my recollection that he
was crying.

4

5

Q. And do you recall how far
into the break that was?

6

A. I don't remember.

7

8

Q. And when you got to the door
of the room did you actually go in, or did you stay
in the door and just look in?

9

10

A. I just went to the door and
said, "Are you all right" to Mrs. Trayner.

11

Q. And the answer was?

12

A. Yes.

13

Q. Did he appear to settle down?

14

A. I believe so, I left.

15

Q. The next question that Mr.

16

Strathy asked was:

17

18

"Q. And do you recall when that was
in your break, was it midway through,
was it more than once?

19

20

A. I believe it was just shortly after
I had left the room.

21

22

Q. And do you recall going in more
than once during your break?

23

24

A. No, I don't remember going more
than once."

25



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2

Q. And I take it therefore that
the occasion that you have just referred to when you
believed the child cried and you went to the door to
look is to the best of your recollection the only
occasion you went to the room during that break?

6

A. That's right.

7

8

Q. And you have no recollection
during the break of actually going into the room at
all, merely going to the door once?

10

A. Right.

11

12

13

Q. Now Mr. Strathy, again, in
Volume 125 and this is at page 8354, Mr. Commissioner,
was asking you about the events of the night when
Babies Manojlovich and Pacsai died?

14

A. Yes.

15

16

17

Q. And in particular about the
Manojlovich arrest to which you went and which you
assisted?

18

A. Right.

19

20

21

22

Q. If I can summarize the effect
of the question I believe I can do it fairly by
turning to page 8356. You remember that Mr. Strathy
read to you an extract from the evidence that Yvonne
Lyons had given at the preliminary inquiry?

23

A. Yes.

24

25



1

2 Q. And having read that extract
3 to you he put this question at the bottom of page
4 8356:

5 "Q. Now, it appears from Mrs. Lyons
6 evidence that she was in the room when
7 you left to go to Baby Manojlovich and
8 it appears that she was also there when
9 you returned and it appears, at least on
10 my reading of it, that she was there
11 throughout the time that you were away.
12 Did that refresh your memory at all as
13 to whether Mrs. Lyons was in the room
14 when you left to go to see Manojlovich?
15 A. I don't remember her being - as
16 I say I don't remember whether she was
17 there or not when I left."

18 Mr. Strathy clearly read the passage
19 of Yvonne Lyons evidence at the preliminary as
20 suggesting that she was in Pacsai's room while you
21 were away and throughout the time while you were away.

22 Do you recall at the preliminary
23 inquiry your counsel, Mr. Cooper, cross-examined
24 Yvonne Lyons on that matter?

25 A. Yes, I do.

Q. Mr. Commissioner, the passage



1
2 is found in Volume 8 of the preliminary transcript
3 and it begins at page 117. Perhaps I can summarize
4 the early part of this before coming to the
5 particular questions that I want to read and put to
6 Miss Nelles. Miss Lyons agreed with Mr. Cooper in
7 the early part of the shift that she was looking after
8 her patients in Room 433 and she had other patients
9 there and Miss Nelles was looking after her other
10 patients in Room 437 that neither of them would be
11 in 431 with Baby Pacsai. At page 118, line 18, the
following exchange occurred:

12 "Q. Right. Similarly when Susan went
13 off to see Manojlovich during that
14 arrest do you remember what time that
15 was in the morning the Manojlovich
arrest?

16 A. The exact time I can't remember.
It could be any time after 2 o'clock.

17 Q. It could have been any time after
18 2 o'clock. That was a Code 25, wasn't
it?

19 A. Yes it was.

20 Q. So she left Room 431 and you saw
21 her go?

22 A. Yes.

23

24

25



1

11

2

"Q. And then at some point - was she gone for an hour, an hour and a half during that arrest?

3

A. I can't remember.

4

Q. You can't recall that?

5

A. No.

6

Q. At some point even while she was gone for the arrest you left to go to 437 to see some of your other children, Room 433 to see some of your other children is that right?

7

A. Yes.

8

Q. So during that period your children there had to be left alone, but that wasn't a terrible thing because they were not on constant care. Is that right?

9

A. No.

10

Q. Right. So unless another nurse came in to see the children and deal with them in the absence of you and Susan Nelles those children were alone. Is that right?

11

A. Yes."

12

I take it you heard Miss Lyons give

13

14



1

2 that evidence in cross-examination?

3 A. Yes.

4 Q. And you cannot tell us whether
5 Pacsai and his roommates in Room 431 were left alone
6 at any stage while you participated in the Manojlovich
arrest?

7 A. No, I cannot.

8 Q. It does appear from what Miss
9 Lyons says that they were left alone for some period
10 of time while you were away?

11 A. Yes.

12 Q. While we are speaking of
13 Baby Pacsai, could you help us with one thing, Miss
14 Nelles, do you have your notes on that child, they
15 are Exhibit 393. I confess I have restapled my copy
16 of these notes so it looks a bit more like a book.
17 I have a page 109 and stapled to the back of it what
you have is a second page facing page 110.

18 A. Yes.

19 Q. Is that really a more
comprehensible set up of these notes?

20 A. That's right.

21 Q. So that what appeared to be
22 notes on the back are really facing the following
23 page?

24

25



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9012

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2 A. Right.

3

Q. Now if you look at page 111

4

for me and the notes which would face that page, the
preceding page in the clip that you have got. It
is a page of notes that begins a little over half way
down the page with the words:

5

"Phyllis Trayner was my team leader
for a ..."

6

Do you have it?

7

A. Right.

8

Q. Now I need a bit of help if
I may please first in deciphering and then under-
standing some of this language, and I recognize it
is not your handwriting.

9

A. Right.

10

Q. And you may have as much

11

difficulty with it as I do, but on the other hand the
notes are apparently notes of what you were saying
and that may help you to decipher the handwriting,
could you read that?

12

A. I am not sure that they were
necessarily - they may have been partially for Mr.
Cooper's use as well.

13

Q. I am sure they were for Mr.
Cooper's use, but whoever made those notes I take it

14

15



14

1 from the way in which they are written was trying to
2 get a more or less verbatim note of what you were
3 saying?
4

5 A. I think so, yes.

6 Q. After all Phyllis Trayner was
not Mr. Cooper's team leader.

7 A. No.

8 Q. When he says "Phyllis Trayner
9 was my team leader", I presume he is taking down your
10 language.

11 A. Right.

12 Q. Now, can you help me with that
note first of all:

13 "Phyllis Trayner was my team leader
14 4A she was involved..."

15 A. Yes.

16 Q. "...baby died, arrest - she
17 came to help me because no one else
18 around. Left Kevin with Phyllis..."

19 And then I run into a bit of trouble, can you help
me with those words.

20 MR. SOPINKA: ...from the time ..."

21 THE WITNESS" "...for a time..."

22 Q. "From the time" or "from time
23 when went to get a drink and cigarettes."

24

25



1

2 A. Right.

3

Q. Who went to get a drink and
4 cigarettes?

5

A. I did.

6

Q. Now, can you fix that for me
in the chronology of events, was that upon your return
7 from the Manojlovich arrest?

15

8

A. That's right.

9

Q. Was it shortly after your
10 return that you left the child with Mrs. Trayner?

11

A. It was in the period of time
that I was concerned about Kevin, and I believe when
12 Dr. Costigan had made the decision that he would
13 transfer the baby to the Intensive Care but he was
14 making those arrangements, and Phyllis asked me if
15 I would like a break and she relieved me while I
16 went out.

17

Q. Now you then got a line which
18 apparently explains for Mr. Cooper the 2:1 block which
19 appears in the notes on the other side. You say:

20

"Major block in rhythm of heart..."

21

And then the next note as I read it says:

22

"No one discussed dig. toxicity was
in back of mind."

23

A. Right.

24

25



1

2 Q. Now, in the back of whose mind
3 was dig. toxicity?

4

5 A. It was my feeling that I asked
6 Dr. Costigan what he thought was the reason for the
7 abnormal rhythm of this child; it seems to be my
8 recollection that he said that it was either a
9 sick sinus syndrome or a possible dig. toxicity,
10 but I can't be positive of that. I don't know
11 whether I am getting that from having read the chart.

12

13 Q. It is my recollection that when
14 I examined you several days ago now that when we looked
15 at the Pacsai chart we looked specifically at the
16 differential diagnosis made by Dr. Costigan that
17 morning and I rather thought you said you had been
18 aware of those things.

19

20

21

22

23

24

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F 1

A. It is my recollection that I asked him what he thought was causing or why this child had such an abnormal rhythm.

Q. Okay. And was it then in Dr. Costigan's mind, in the back of Dr. Costigan's mind, that you are suggesting that digoxin toxicity was lurking as a possibility?

A. Right.

Q. Okay. But there was no discussion of it you say according to this note?

A. Other than - my recollection, as I say, is that I asked him. There was not a discussion. It was simply I asked him what he thought was the problem with this child.

Q. Okay.

THE COMMISSIONER: Yes, Mr. Olah?

MR. OLAH: Before my friend leaves that subject, perhaps we could have a translation of the next line also.

THE COMMISSIONER: "Thought we'd lose him - to lose 2 in one night was particularly frightening."

MR. OLAH: You are much better in interpreting Mr. Cooper's writing obviously than I am if that is what it is.



F.2

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2 THE COMMISSIONER: Well, it is much
3 better writing than my own. So I am experienced.

4 MR. SOPINKA: I don't know if any of
5 this is re-examination. I don't remember anybody
6 cross-examining in that - I mean I am not objecting
7 but if everybody is going to be standing up, "read
8 us this", "read us that" we are going to be into a
long examination.

9 THE COMMISSIONER: Well, it is not yet
10 epidemic.

11 MR. SOPINKA: Well you have to stop
12 it when it starts.

13 MR. OLAH: Mr. Sopinka worries too
14 much, Mr. Commissioner.

15 MR. SOPINKA: I worry about you.

16 MR. LAMEK: Q. There are only four
17 words there that I cannot read, Miss Nelles. They
18 are the first words of what is written obliquely. It
says:

19 "Kantak was a paediatric resident"
20 and above that four words which I cannot read. Can
you help us?

21 THE COMMISSIONER: "Available to the
22 whole hospital".

23 MR. LAMEK: "Available to the whole

24

25



F.3

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2 hospital", thank you.

3 THE WITNESS: Yes.

4 (2) MR. LAMEK: Q. "May not have too much
5 cardiology background".

6 A. Right.

7 Q. Miss Nelles, there has been a
8 good deal of evidence given about constant care
9 nursing, shared care nursing, relief provisions that
10 are made and so on. I want to be clear from all that
11 has been said - I want to focus upon night shifts. Is
12 it usual for a nurse on constant care or shared care
nursing at night to be relieved by an R.N.?

13 A. I don't think that - usually it
14 is an R.N. who is assigned to constant care and I
15 don't think the differentiation comes between days
16 and nights. I don't think it really matters whether
17 it is days or nights. If an R.N. is available that
18 is the preferred course that should be taken for
19 relief of constant care, but if there is not someone
20 available then it is an R.N.A. An R.N.A. can in that
21 circumstance relieve, but I really don't see that
there is the differentiation between days and nights.

22 Q. Do you recall any occasion,
23 first of all, in the nine-month period in which we
are interested and then let's enlarge it to the

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F.4

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entire time that you worked on the cardiology service of the Hospital, do you recall any occasion when you or any other R.N. with a constant or shared care nursing assignment was relieved for a break by an R.N.A.?

A. Well, I remember with Estrella that definitely Mary Cooney relieved Gloria Ganassin during the day.

Q. That was during the day?

A. Yes.

Q. But you say no distinction at night?

A. No.

Q. All right. Other witnesses have suggested there may be, you see.

A. Yes.

Q. Do you recall any night shift when you or any other nurse to your knowledge was relieved on a constant or shared care nursing assignment by an R.N.A.?

A. For a short break.

Q. I am talking about coffee and lunch breaks. Major breaks of the night.

A. I certainly can remember some occasions where someone wanted to leave the room for



F.5

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2 a few minutes and said to an R.N.A. "Would you please
3 sit here for a moment".

4 Q. Surely.

5 A. While they go out.

6 Q. I agree that is not unusual. We
7 have heard that evidence. But frankly I am surprised
8 by any suggestion that R.N.A.'s may relieve for
9 breaks on constant care or shared care at night
10 certainly. Sui Scott could certainly recall no such
occurrence.

11 I ask you, therefore, can you recall
12 any occasion of relief by an R.N.A. at night of a
nurse on constant or shared care?

13 A. I can't remember, no.

14 Q. Did nurses ever come over from
15 Ward 4B to relieve a constant care nurse on 4A for
her break?

17 A. No.

18 Q. Or 4A over to 4B for that purpose?

19 A. No.

20 Q. I know you might be assigned
for all or part of a shift to work on the other side.

21 A. Right.

22 Q. But situations did not arise
where let us say Mrs. Scott is on constant care on 4A,

24

25



F.6

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2 there is no one who can relieve her for a break, no
3 R.N. who can relieve her for a break so someone comes
4 over from 4B to do it. That did not happen?

5 A. No, it did not.

6 Q. Okay.

7 THE COMMISSIONER: Mr. Lamek, do you
8 not think that Exhibit 395 - this is getting into
9 argument - would have specified if that were the rule
10 that you could be relieved only by an R.N.? I take
11 it 395 has now been distributed, has it? Nowhere
12 there does it say anything about R.N.'s or R.N.A.'s.

13 MR. LAMEK: No, it doesn't, sir, but
14 equally I have understood the evidence to be that
15 R.N.A.'s are not assigned to constant care in the
16 first place.

17 THE COMMISSIONER: That's right.

18 MR. LAMEK: Is that fair?

19 THE WITNESS: Usually, yes.

20 THE COMMISSIONER: That's true, but --

21 MR. LAMEK: This document doesn't
22 even suggest that only R.N.'s can provide constant
23 care. I suggest the document is silent on the point,
24 is it not?

25 THE COMMISSIONER: What would you
think, for instance, Miss Nelles - this is way off -



F.7

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2 supposing the parents were visiting. Would you
3 consider it wrong if you were on constant nursing
4 care to leave the baby with the mother to go out for
5 a short period?

6

THE WITNESS: Yes, it is.

7

THE COMMISSIONER: That is wrong, is it?

8

THE WITNESS: Yes.

9

MR. LAMEK: Q. There is a matter,
10 Miss Nelles, I would like your help on if I can. The
11 great chart that we have been referring to throughout
12 with all the Category A and B deaths listed. By all
13 means check my counting if you will, but you might
14 be prepared to rely on me for it.

15

16 Of the 29 Category A and B deaths that
17 are listed on that chart by my count seven (that is
18 to say almost 25%) occurred on Ward 4B?

19

A. Right.

20

Q. Now so far as I am aware, Miss
21 Nelles, none of the seven patients who died on 4B was
22 on constant or shared nursing care at the time of
23 his or her death. And the reason I have to ask you
24 for some help is of course we don't have the 4B
25 assignment books for the first part of what we call
the epidemic period.

26

With respect to, and I confess I am

27

28



F.8

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2 drawing a bow at a venture here, it is a long shot,
3 with respect to Woodcock and Taylor and Onofre I tell
4 you I found no indication in the charts that constant
5 care or shared care was ordered for any of those
6 children.

7

8 Do you have any recollection or
9 information at all as to whether some enhanced level
of nursing care had been ordered for any one of
those?

10

11 A. The only one I am not sure
12 about is Manojlovich. It is my feeling that she may
have been on shared care. She was certainly in an
isolation room.

13

14 Q. Yes. But apart from the others
15 you have no recollection that any of the 4B patients
16 was at the time of their deaths on constant or shared
care?

17

A. I don't know, no.

18

Q. You don't know either way?

19

A. I don't recall that any of them
were but --

20

21 Q. Well, fairly, do you recall
either way or do just have no recollection at all?

22

A. It would be really impossible for
me to know.

23

24

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Q. Okay. I said it was a long shot.

3

4

THE COMMISSIONER: Was there a practice
of the most ill babies being put on 4A with constant
care?

5

6

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10

THE WITNESS: The only differentiation
is that 4A had more infant beds whereas 4B had more
older children's beds, so if we had an infant trans-
ferred to the Hospital it seemed more likely that
they would be assigned to 4A because there were more
beds available for infants on that side.

11

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MR. LAMEK: Q. You were quite right
about Manojlovich, of course. She was on, according
to the tour end report, shared care, and according
to the assignment book, on constant care the night
of her death. Frankly those deaths are not my
difficulty. We have the assignment books for those.

A. Right.

Q.

It is the earlier ones for which
we don't have the assignment book about which I hoped
you might be able to give me some help. But clearly
you cannot. I was hoping for too much.

Is it fair to say, Miss Nelles, in

your recollection that generally speaking the team
leader has the lightest patient load, certainly at
nights?



F.10

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A. In terms of patient assignment,
yes.

4

5

6

7

Q. Is it fair then to say generally speaking the team leader is more readily available to relieve constant or shared care nurses because of her relatively light patient assignment load?

8

A. Yes.

9

Q. Now while we are talking about team leaders, Mr. Hunt in Volume 125 (page 8449, sir) asked a series of questions about your perception of yourself in relation to Mrs. Trayner. Do you remember that?

10

11

12

A. Yes.

Q. Beginning at line 4:

13

14

15

16

17

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19

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"Q. All right. Did you feel that you were as capable as Phyllis Trayner to be the team leader?

"A. I don't recall comparing myself to other people in that sense of the word. I recall thinking that in terms of what had been told to me that I had reached the stage that I had been on the floor long enough and I had gained enough experience and I had enough background that, yes, now I could be



F.11

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"considered to at least think about fulfilling that role, but I didn't compare it, didn't think of myself as capable as anyone else.

6 "Q. Now it has been suggested by
7 at least two of your colleagues, and
8 that is Nurses Costello and Bell,
9 that in their perception, part of the
10 tension that existed between you and
11 Phyllis Trayner had to do with
12 personalities and that in part might
13 have been responsible or in part might
14 have been grounded in the fact that
15 you felt you were as capable of being
16 a team leader as Phyllis was?

17 "A. I felt that I was as capable an
18 R.N. as Phyllis Trayner was. It had
19 no relation to team leading."

20 Now with respect to Phyllis Trayner's
21 team leadership is it fair to say that you did not
22 care for her leadership style?

23 A. In the beginning we had some
24 differences, yes.

25 Q. Indeed you positively disliked
it, did you not?



F.12

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2 A. I didn't agree with it, no.

3 Q. You disagreed with it. What I
4 suggested was disliked it to the point where you
5 told the head nurse that if that attitude and conduct
6 didn't change you wanted to be assigned to another
7 team. Is that correct?

8 MR. SOPINKA: My friend went into
9 all of this in his examination.

10 MR. LAMEK: Well, I am going into it
11 again if I may, Mr. Commissioner, with a purpose.

12 MR. SOPINKA: Well, if he admits
13 that is what he is doing. I may have some re-
14 examination.

15 THE COMMISSIONER: Well, this follows
16 upon Mr. Hunt's examination. If you want --

17 MR. SOPINKA: Yes, but nothing new
18 arose out of it.

19 THE COMMISSIONER: I have a simple
20 solution to this. It is not one that appeals to me
21 but if after this is over you feel you would like
22 some further examination of your client you can move
23 for it and I will grant it. And then of course
24 there will be further re-examination after that.
25 This is prefaced on Mr. Hunt's examination so it is --

MR. SOPINKA: He mentions it but he



F.13

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2 asked the same questions in his original examination.

3 THE COMMISSIONER: Well --

4 MR. SOPINKA: Well, I am not going to -
5 Commission Counsel, if he wants to ask further
6 questions presumably he is entitled to, but I mean
7 let's not call it re-examination.

8

9 MR. LAMEK: Well, Mr. Commissioner,
10 whether it is re-examination at the moment is a little
11 premature. Let me make it plain. I am to a degree
12 challenging the proposition that Miss Nelles did not
13 compare her potential leadership qualities with that
14 of Mrs. Trayner and what may have flowed from that.

15

THE COMMISSIONER: Yes.

16

17 MR. LAMEK: Q. You have told us for
18 the sake of the continuity, Miss Nelles, these are
19 my words - you may not choose to adopt them; use
20 your own - you found her leadership style overbearing?

21

22 A. I didn't feel that she was
23 working with me.

24

25 Q. Okay. Did she seem to set a
26 distance between herself as a leader and the other
27 members of her team, a sort of boss/employee
28 relationship? Is that what you perceived?

29

30 A. I got that impression at that
31 time, yes.

32

33



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Q. Rather than being the first
among equals she was above you and you were beneath
her? Is that the impression you had?

3

A. I had that feeling at times, yes.

4

Q. And you thought that approach
was not conducive to effective operation of the team
as a team I take it?

5

A. That was my feeling, yes.

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Nelles
re.ex. (Lamek)

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Q. Were you aware whether other members of the team had similar feelings about her leadership style?

A. I was aware I believe of Bertha Bell's feelings as a team leader opposite to her. I don't recall really talking to the other team members about that specifically.

Q. Did you form any impression as to whether Mrs. Scott seemed to find the Trayner leadership style a happy one?

A. I got the impression at times that she felt like I did.

Q. Now, you have told us frankly and perfectly understandably that presumably from the time you arrived on the cardiology service you hoped that eventually one day you would become a team leader.

A. That I would improve myself, yes.

Q. Yes, of course. And from the time of your evaluation in the fall of 1980 you had every proper basis to expect that you would become a team leader in the fairly near future, did you not?

A. That was what was written there.

24
25



Nelles
re.ex. (Lamek)

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G2 2 Q. Of course. I suggest to you
3 that you must have given some thought as to how you
4 would deal with your team when that time came, how
5 you would deal with your team so as to promote feelings
6 of cohesion and cooperation and team spirit. You
must have led your mind to that, did you not?

7

A. I'm not so sure that I did
8 really specifically relate it to those kinds of
9 thoughts.

10

Q. Miss Nelles, surely you
11 thought that you could do a better job in promoting
12 cohesion and team spirit and cooperation by adopting
13 a style other than the one that Mrs. Trayner had
and which bothered you?

14

A. I didn't look at it that way.
I looked at it that I wanted to resolve a situation
that was occurring at that time.

17

Q. Of course you did, but did
18 you never say to yourself, when I become a team
leader, I am not going to make my team members feel
19 this way?

20

A. I may have but I don't
remember feeling that way.

22

Q. Did you not in fact feel that
23 you would be at least as effective a team leader in

24

25



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G3 2 terms of the dynamics of the team and cooperation
3 and cohesion as Phyllis Trayner was?

4 A. As I say, I really don't re-
call comparing myself to her in that way.
5

6 Q. All right. Now, Mrs. Trayner
7 you have told us, and you told Mr. Percival in
particular, Volume 126, at page 8620, sir, Mrs.
8 Trayner you told him with respect to Miller and
9 perhaps Cook helped you to do the final nursing
10 notes following the death of Miller and the death of
11 Cook. Do you remember telling him that? I can
12 refer you to a particular answer if it would be help-
ful?
13

A. I can recall on various
14 occasions that I would consult Mrs. Trayner as to what
15 to include in the notes and with respect to Cook, she
16 had relieved me for a certain period of time, so I
17 wanted to check with her about the feeding. I believe
18 I already knew.
19

Q. Sure.

A. And with respect to Miller I
20 was there so little . that I needed to get some
21 information.
22

Q. And you so said about Miller
23 when Mr. Percival asked you those questions and
24



G4 1
2 obviously it makes sense she probably spent as much
3 time with the baby as you did that night.

A. Right.

Q. 5 And in completing the final
6 note it would be helpful to you to know what her
7 observations had been?

A. Right.

Q. 8 And similarly with Cook when,
9 as you say, she relieved you in the aggregate anywhere
10 up to an hour and a half over the course of two
11 breaks and it would be helpful to know if there was
12 anything that should be included that occurred during
13 those breaks?

A. Right.

Q. 14 Now, Mr. Percival did ask
15 you this question, it is at page 8622, Mr. Commissioner,
16 in Volume 126, line 4:

"Q. 17 Well, whether or not it is
18 11 or 12..."

That related to a previous exchange.

"...do you recall that on those
20 occasions when Phyllis Trayner was
21 team leader and you were the nurse
22 that was in charge of the baby that
23 died, did on each and every occasion



Nelles
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G5 2 Phyllis Trayner assist you in pre-
3 paring the final nursing notes?"

4 And your answer was:

5 "A. I don't remember that she
6 helped me on all of them or even a
7 great part of them. If she did help
8 me it would not be during the course
9 of the evening but would be more in
10 terms of the actual final events and
11 when the children showed difficulty
12 and who arrived and what was done.
13 Those were the times that I asked her
14 assistance at times."

15 And my question to you arising out
16 of that is this, Miss Nelles, do you recall any
17 occasions other than Miller or Cook when Mrs. Trayner
18 was able to assist you as to the events that happened
19 during the course of the shift because, for example,
20 she had relieved you or she had something to do with
21 the child in the course of the shift in your absence?

22 A. I don't remember that so much
23 as asking her for help in wording and preparing the
24 note so that it would accurately portray the events
25 of the night.

26 Q. And you do not recall any



1

G6 2 case then other than Miller and Cook where you needed
3 her contribution as to observations that may have
4 been made in your absence?

A. I always asked her, or almost
5 in every case I believe I would ask her to read my
6 final nursing note and see if there was anything that
7 she could recall or add or think that I should include.

Q. All right. In particular do
9 you remember getting any help or information from her
10 with respect to Lillian Hoos or Kelly Ann Monteith?

A. I don't specifically remember,
11 no.

Q. Would it be of any assistance
13 to you to look at your final notes on those two
14 children; if you think it would not then tell me and
15 we will save the time.

A. I know that there was one
17 chart I noticed that had an asterisk and there was an
addition made at the bottom.

Q. You don't recall which one?

A. I don't remember which chart
20 it was, no.

Q. Okay.

THE COMMISSIONER: You are saying,
23 'I do remember the occasion but I don't remember the



Nelles
re.ex. (Lamek)

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G7 2 name of the child'?

3 THE WITNESS: Right.

4 THE COMMISSIONER: What happened?

5 Was that an addition that was given to you by Phyllis
6 Trayner?

7 THE WITNESS: I don't know but I'm
8 saying there was an asterisk, I noticed there was an
9 asterisk in the content and that there was an addition
at the bottom.

10 THE COMMISSIONER: Yes, but what do
11 you draw from that?

12 THE WITNESS: I don't know, someone
13 may have said to me, you forgot to add this.

14 THE COMMISSIONER: I see.

15 MR. LAMEK: Mr. Commissioner, we have
16 been going for an hour and a half and I may have ten
17 to fifteen minutes more. May we take a short break
now, please?

18 THE COMMISSIONER: Yes, all right.

19 MR. LAMEK: Thank you.

20 THE COMMISSIONER: We will take, what,
21 ten minutes, is that enough?

22 MR. LAMEK: Fifteen minutes, please.

23 THE COMMISSIONER: Fifteen minutes,
all right.

24 --- short recess.

25



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G8 2 ---- on resuming.

3 THE COMMISSIONER: Yes, Mr. Lamek.

4 MR. LAMEK: Thank you, sir.

5 Q. Miss Nelles, we will not be
much longer I promise you.

6 In the course of Mr. Percival's
7 cross-examination, and I am referring now, Mr.
8 Commissioner, to Volume 126, page 8656.

9 Beginning at line 7 Mr. Percival
10 asked you these questions, and I am giving them to
11 you to assist your recollection:

12 "Q. I understand. I want to deal
13 with the situation that I think Mr.
14 Hunt put to you, and I want to talk
15 in terms of going back to the death
16 of Allana Miller and the evidence that
17 Bertha Bell has given in these pro-
18 ceedings about a 3 cc. syringe being
19 utilized by Phyllis Trayner and
20 administering something into the
21 buretrol of Allana Miller at or about
22 midnight on the night she died."

23 "A. Right."

24 "Q. Do you remember saying
25 yesterday..."



Nelles
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G9 2 and then he gave the page reference.

3 "...to Mr. Hunt that at some point in
4 time you were shocked to learn about
5 that evidence. I had better put it
6 to you fairly."

7 "A. That was his wording. I
8 answered, 'yes'."

9 "Q. I'm sorry. Well, then, were
10 you shocked, whether it is his wording
11 or yours, and was that your view of
12 the evidence?"

13 "A. I was surprised to hear about
14 it, yes."

15 "Q. Well, does it then retreat
16 from -- then you don't agree with the
17 word 'shocked', it is just a question
18 you were surprised?"

19 "A. I agreed with what he said to
20 me, yes."

21 "Q. Well, no, he used the word
22 'shocked', you agreed?"

23 "A. Right."

24 "Q. Do you still say you were
25 shocked when you learned of that
information or is it now you were



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surprised?"

3

A. Those were the words that he chose, that would not necessarily be the wording I would choose."

4

5

Q. Well, tell me your choice of wording?"

6

7

A. I was surprised when I heard that evidence, yes."

9

10

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Now, there is a distinction there that frankly escapes me a little bit. Can you tell me where on a scale of 1 to 10 surprise and shock have their place?

13

A. I had never heard that evidence before, so it was surprising, in other words, I had not heard anything to that effect before. To me, shocked seems more surprising I guess or that it really made an impact on someone.

17

Q. All right. Perhaps we had better see just what it was that you said to Mr. Hunt then. That is in Volume 125, at page 8534. Mr. Hunt asked you this:

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Q. Let us move on to Allana Miller. I take it you have heard about the evidence that Bertha Bell gave to this Commission concerning



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Nelles
re.ex. (Lamek)

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G11 2 her seeing Phyllis Trayner injecting
3 a medication into the buretrol of
4 Allana Miller some time at or shortly
5 before 12 midnight on the night that
she died?"

6

"A. Yes."

7

"Q. And can I ask you, when you heard that evidence, was that the first time you had ever heard that?

10

"A. Yes, it is."

11

"Q. And were you shocked when you heard that?"

13

"A. Yes, I was."

2

"Q. And I take it you were shocked when you heard that because you realized that there was no medication prescribed to be given to Allana Miller at or shortly before 12 o'clock?"

10

"A. Right."

I have to say you have now confirmed to me that "surprise" registers a little lower down the Richter scale of reaction than "shock" does but I am a little puzzled, Miss Nelles, that in answering Mr. Percival's questions you backed away from the shock which you acknowledged to Mr. Hunt. You were

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25



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G12 2 quite right of course "shocked" was Mr. Hunt's word
3 but you did agree with it.

4

A. Right.

5 Q. And if I may say so you have
6 not hesitated to reject on other occasions suggestions
7 that have been put to you if they didn't accord with
8 your view of the appropriate characterization of
9 something. You didn't tell Mr. Hunt, did you, that
10 "shocked" was too strong a word to describe your
11 reaction when you heard about Bertha Bell's evidence
on the point?

12

A. No, I did not.

13

Q. I recognize of course, as
14 you do I know, that Mrs. Bell later expressed some
15 doubt about precisely when she saw what she described
16 to us but if in fact Bertha Bell at or about midnight
17 on the long night shift of March 20 to 21 did see
18 Phyllis Trayner in Allana Miller's room putting some-
thing into the buretrol on the IV setup with a 3 cc.
19 syringe fitted with a needle, why would you not be
shocked?

20

A. I say "surprised" because, as
I say, I had not heard that testimony before.

21

Q. Well, it's novelty I would
have thought, if anything, would enhance its effect,

22

23

24

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Nelles
re.ex. (Lamek)

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G13 2 not soften it?

3 A. Right.

4 Q. You know that there was no
5 medication ordered for the child at that time at
midnight?

6 A. Right.

7 Q. You know that there is none
8 recorded as having been administered at that time?

9 A. Right.

10 Q. You don't believe that if
11 Bertha Bell did indeed see what she saw, what she
12 said at midnight, you don't believe that what she
13 was seeing was Phyllis Trayner flushing the IV line?

14 A. That's a possibility, if she
was doing it that way.

15 Q. In light of your earlier
16 evidence, is it really a possibility with a 3 cc.
17 syringe?

18 A. I would say it was unlikely.

19 Q. You have told me already you
20 can think of no explanation for what Phyllis Trayner
21 was doing, if indeed Bertha Bell saw what she
described at midnight?

22 A. Right.

23 Q. And if Phyllis Trayner was

24

25



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GL4 2 seen to be doing something unauthorized, unrecorded
3 and inexplicable in adding something to the buretrol
4 and the IV of a child who later died that night, are
5 you not indeed shocked?

6

MR. SOPINKA: Well, I don't know
that it is inexplicable, we haven't heard from Phyllis
Trayner.

7

A. I guess it is my feeling that
I am relying on what someone is saying.

8

MR. LAMEK: Q. Yes.

9

A. And I don't know what Mrs.
10 Trayner has to say about it, I was not there.

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Q. Miss Nelles, I understand all of that, and of course we will be hearing Mrs. Trayner's story of what happened and her explanation, if she has an explanation, whatever it may be, and it may well be that the whole incident may be totally explained to everybody's satisfaction. But at the time you heard that evidence I take it you went through in your mind what on earth it could possibly mean.

A. Right.

Q. And being unable to find an explanation that fitted the evidence that Mrs. Bell gave, did you not find that as you agreed with Mr. Hunt, shocking?

A. Yes.

Q. Now I have just one final area please if I may. Mr. Percival again in cross-examination and Mr. Olah again yesterday pursued a certain point with you, and Mr. Percival's cross-examination is found in Volume 126 at page 8705, beginning at line 11, and Mr. Percival asked you this:

"Q. Yes. Do you have an opinion, and answer it yes or no, from the time of your arrest up until the present time whether anyone else was



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"administering digoxin that was not
prescribed or administering overdoses
of digoxin?

3

A. That possibility arises, yes."

4

Mr. Percival was about to ask a
question and the Commissioner said:

5

"THE COMMISSIONER: That would
appear that is a good enough answer.
I am more interested in the basis for
it."

6

And Mr. Percival therefore asked:

7

"Q. What is the basis for that
opinion?

8

A. I think like many other people
the fact that we have a baby, Justin
Cook, who is not prescribed digoxin
and who has a level that is extremely
high, and the body does not manufacture
that drug, I guess that is the one
thing that is hard to explain any other
way."

9

Now, Mr. Olah yesterday pursued that
point a little further with respect to Justin Cook,
and whenever I can find my way through all of this
stuff I will try to remind you of what you said. It

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3 begins at page 8806, Mr. Commissioner. I won't
4 bother to read the whole of this but you will remember,
5 Miss Nelles, that Mr. Olah had you tell him that
6 except for breaks you were with Cook constantly
throughout that shift until the time of his arrest.

7 A. Right.

8 Q. And that as far as you were
9 aware when you were on your break Mrs. Trayner was
with him constantly?

10 A. Right.

11 Q. Now, the pharmacological
12 evidence that we have had, and I am sure you are
13 aware of this and I hope I summarize it correctly;
14 is that the best pharmacological opinion is that if
15 Baby Cook received digoxin, and he almost certainly
16 did, then it was administered to him some time during
17 the long night shift March 21 to 22, you are aware
18 of that opinion as having been expressed. I take it
19 that we can agree whether digoxin was administered
to that child accidentally, or knowingly, it had to
be administered by a person?

21 A. I would think so.

22 Q. Yes, I would have thought so.

23 By a person who had access to Cook during that night
shift?

24

25



Nelles, re-ex
(Lamek)

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A. Yes.

3

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Q. We know that Cook did not leave 418 during the night shift, so "Mohammed had to go to the mountain" if there was to be an administration of digoxin, the person had to go to Cook in Room 418?

5

A. Right.

6

Q. Are we together so far?

7

A. Yes.

8

9

Q. You were giving constant nursing care for Cook that night?

10

A. Yes.

11

12

Q. You told Mr. Olah that at no time during the shift, from the moment you took over from Sui Scott until the time that child arrested did you leave 418 except when you were relieved for breaks?

13

A. Right.

14

15

Q. Now you had two breaks as we know, from 11:15 until about midnight and from 2:30 until about 3:15.

16

A. Right.

17

Q. Each time you were relieved by Mrs. Trayner?

18

A. Right.

19

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Nelles, re-ex
(Lamek)

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Q. You told Mr. Olah so far as
you know during neither of those breaks did Phyllis
Trayner leave Cook unattended?

3

A. Right.

4

Q. Now of course we will have
to ask Mrs. Trayner whether in fact she stayed with
him constantly, you can't tell us that for sure?

5

A. Right.

6

Q. But you didn't leave him for
a moment except when you were relieved by Phyllis
Trayner?

7

A. Right.

8

Q. And therefore if Justin Cook
received digoxin that night, is it fair to say the
dose had to be administerd by one of five people?
Either by you, or by somebody in your presence while
you were in the room. Or by Mrs. Trayner, if she
did not leave the room during breaks; or by somebody
in her presence; or if she left the room by somebody
in her absence?

9

A. Right.

10

Q. Can you think of any other
possibility than those five?

11

A. No.

12

Q. Now, you can help us with two

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Nelles, re-ex.
(Lamek)

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of those possibilities. You have been asked repeatedly
and I ask you again for the sake of filling in the
lines here, did you administer digoxin to Justin
Cook that night?

6 A. No, I did not.

7 Q. Did anybody in your presence
8 administer digoxin or any other medication to Justin
9 Cook that night up to the time of his arrest?

10 A. Not that I am aware of.

11 Q. Well, while you were in the
12 room I take it it would have been enormously
13 difficult to administer anything to that child
14 without you knowing it, would it not?

15 A. Right.

16 Q. Now, Miss Nelles, if those
17 answers are true, it follows, does it not, that
18 the only persons who could have given digoxin to
19 Baby Cook that night would be the other three
20 possibilities that I mentioned. That is to say
21 Mrs. Trayner, or someone in her presence; or if she
22 left the room someone in her absence?

23 A. Right.

24 Q. And we have to see what she
25 says about those three possibilities, do we not?

26 A. Yes.



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Q. And as to those three you can
be of no assistance to us?

3

A. No, I cannot.

4

Q. And we have your evidence now
as to the first two possibilities?

5

A. Right.

6

MR. LAMEK: Miss Nelles, thank you
very much, you have been kept a long time and you
have been very helpful.

7

THE COMMISSIONER: Yes, did you --

8

MR. SOPINKA: I have one question

9

that I think should be asked because whether
Miss Nelles has testified to this, or whether it is
based on something that she has told me, it puts
somewhat of a less sinister connotation about one
of the circumstances.

10

RE-DIRECT EXAMINATION BY MR. SOPINKA:

11

Q. You recall, Miss Nelles, being
questioned by Mr. Lamek about an occasion on March
21st when Phyllis Trayner came into Room 418 and
showed you a syringe with gentamicin?

12

A. Right.

13

Q. And the inference was that
she was doing that to satisfy you that the correct
drug was being administered?

14

15



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A. Right.

3

4

Q. Now, she didn't sign-off that
drug, did she?

5

A. No, she did not.

6

7

8

Q. And if she knew that she
wasn't going to do it, is there any other reason
why she might be showing you that drug at that time?

9

A. No, there is not.

10

11

Q. How would you know - would
she have to tell you that she had done it, so that
you wouldn't do it?

12

A. Yes, she would.

13

14

Q. And might this have been
an alternative method of advising you that she had
administered the drug rather than satisfying you
that it was the right drug?

15

16

A. That's right.

17

MR. SOPINKA: Thank you.

18

19

THE COMMISSIONER: Mr. Lamek, any
further re-examination?

20

21

MR. LAMEK: No. Thank you, sir.

22

23

THE COMMISSIONER: Thank you,
Miss Nelles, thank you indeed.

24

25

THE WITNESS: Thank you.

THE COMMISSIONER: We will rise now



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until 10 o'clock tomorrow morning.

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----Witness withdraws.

4

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---Whereupon the hearing adjourned at 11:40 a.m.
until Wednesday, April 11th, 1984 at 10:00 a.m.

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